Office-Supreme Court, U.S.
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SEP 27 1983
ALEXANDER L. STEVAS,
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No. 82-1678

In the Supreme Court of the United States

OCTOBER TERM, 1983

ERIN FULTON, ET AL., ETC., PETITIONERS

v.

PLUMBERS AND STEAMFITTERS, LOCAL 598, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether employees who lose wages as a result—direct or indirect—of a jurisdictional strike that violates Section 8(b)(4)(D) of the National Labor Relations Act, 29 U.S.C. 158(b)(4)(D), have standing to sue the responsible union for damages under Section 303 of the Labor Management Relations Act, 29 U.S.C. 187.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C) is reported at 695 F.2d 402. The memorandum and order of the district court (Pet. App. D) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 1982. The petition for a writ of certiorari was filed on March 25, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

Section 8(b)(4)(D) of the National Labor Relations Act, 29 U.S.C. 158(b)(4)(D), is reproduced at Pet. App.

B. Section 303 of the Labor Management Relations Act, 29 U.S.C. 187, is reproduced at Pet. App. A. See also page 3 note 2, *infra*.

STATEMENT

1. Petitioners are employees of Guy F. Atkinson Co. and Wright-Schuchart-Harbor ("AWSH"), a joint venture engaged in construction work at the Washington Public Power Supply System projects at Hanford, Washington.[1] Most of the petitioners are carpenters who are members of the Carpenters Union; the remaining petitioners belong to other unions. None of the petitioners are members of the respondent unions—locals of the Plumbers Union and the International Brotherhood of Electrical Workers. This action arises from a dispute over work assignments at the Hanford site between the Carpenters Union and the two respondent unions that developed in 1979. The controversy was submitted to the AFL-CIO Impartial Jurisdictional Disputes Board under Article XX of the AFL-CIO constitution. That board awarded part of the disputed work to the Carpenters, and AWSH made work assignments in conformity with the award. In March 1980, however, the respondent unions demanded that the work so assigned be reassigned to their members, and some of those members thereafter destroyed work completed by the carpenters at the site and encouraged a site boycott. In response to these actions, AWSH suspended operations for ten days. As a result,

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[1] The facts alleged in petitioners' complaints, which were accepted as true for purposes of the motion to dismiss the complaint, are stated in the opinion of the district court (Pet. App. D) and the opinion of the court of appeals (695 F.2d at 403-404). (Because the reproduced text of the court of appeals opinion at Pet. App. C is not paginated, we cite the published report of the court of appeals' decision.)

all employees at the site (some 1800 individuals) were laid off and suffered ten days' wage loss.

Petitioners brought suit in the United States District Court for the Eastern District of Washington against the respondents under Section 303 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. 187, seeking to recover wages and benefits lost during the work suspension.[2] Petitioners also sought certification of a class consisting of all employees laid off at the Hanford site during the 10-day period.

2. Without ruling on the class certification motion, the district court dismissed the complaints on the ground that plaintiffs lacked standing to sue for dam-

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[2] Section 303 of the LMRA provides:

> (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section [8(b)(4) of the National Labor Relations Act, as amended].
>
> (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of [29 U.S.C. 185] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

Section 8(b)(4) of the National Labor Relations Act ("NLRA"), 29 U.S.C. 158(b)(4), provides that it shall be an unfair labor practice for a labor organization or its agents to engage in a strike pressure or otherwise to restrain or coerce others with the objective of

> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *.

ages under Section 303 of the LMRA (Pet. App. D).[3] The court reasoned that the wage losses alleged were only "secondary and incidental" to the allegedly unlawful union conduct rather than "a direct or intentional injury from the conduct of the [respondent] unions," that permitting recovery for such incidental losses would seriously jeopardize the ability of unions to pursue lawful objectives, and that the legislative history of Section 303 suggested that Congress' objective was to protect the interests of small businessmen. The court also observed that damages under Section 303 were limited to persons injured in their "business or property." Relying upon *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 264 (1972), which construed the identical phrase in Section 4 of the Clayton Act, 15 U.S.C. 15, the district court concluded that plaintiffs' wages did not constitute "business or property" within the meaning of Section 303(b).

3. The court of appeals affirmed. It concluded (695 F.2d at 405-408) that plaintiffs did not meet a standing requirement imposed by Section 303(b)'s limitation of the right of action created to persons injured *"by reason of* any violation of" Section 303(a). In reaching this conclusion, the court relied in part on the reasoning of cases concerning standing to sue under Section 4 of the Clayton Act. The court of appeals acknowledged (695 F.2d at 406-407), however, that, given the distinct remedial policies of the Clayton Act and the federal labor laws, antitrust standing principles could provide only "general guidance," and that construction of Section 303 of the LMRA must be informed by "the policies reflected in the National Labor Relations Act."

The court observed that the Ninth Circuit had employed a "target area" analysis in Clayton Act cases under which a plaintiff could establish standing only if he

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[3] The district court found that petitioners' allegations, if proven, would support a finding that respondents had committed an unfair labor practice under 29 U.S.C. 158(b)(4).

showed that he "was within the target area of the defendant's illegal practices and was not only 'hit,' but also 'aimed at'" (695 F.2d at 407, citation omitted). The antitrust standing analysis had been "refined" in *Blue Shield of Virginia* v. *McCready*, 457 U.S. 465 (1982), the court of appeals noted. 695 F.2d at 407. There, this Court had held that, when "faced with a claim that an injury is too remote from the alleged violation to warrant § 4 standing," a court must look "(1) to the physical and economic nexus between the alleged violation and the harm to the plaintiff, and (2), more particularly, to the relationship of the injury alleged with those forms of injury about which Congress was likely to have been concerned in making defendant's conduct unlawful and in providing a private remedy * * *" (*Blue Shield of Virginia* v. *McCready*, *supra*, 457 U.S. at 477-478).

Applying these principles here, the court of appeals determined that the "principal object of the appellee unions' illegal activities was to pressure the site employer to reassign work from members of the Carpenters' Union to members of the appellee unions," and that the employers' response—"suspending operation and temporarily laying off workers"—was not a "'necessary and integral' aspect of the section 8(b)(4)(D) violation" (695 F.2d at 407). The court also reasoned that "the injury alleged is not reflective of Congress' core concerns in prohibiting the type of conduct engaged in by appellee unions," inasmuch as "[s]ection 303's legislative history reveals that Congress was principally concerned with the debilitating effect secondary activity and jurisdictional disputes have on farmers and small businesses." 695 F.2d at 407. The court found no indication that "Congress sought to extend the right of action afforded by section 303 to employees of an injured employer." 695 F.2d at 408.[4]

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[4] The court of appeals found it unnecessary to decide whether, as the district court had indicated, an employee's wages are

DISCUSSION

The court of appeals cautiously applied standing principles developed under Section 4 of the Clayton Act, while taking into account the general policies of the National Labor Relations Act, in determining whether particular plaintiffs have standing to sue for damages under Section 303 of the LMRA. This line of analysis was, in our view, generally correct. However, the court of appeals did not have the benefit of the recent decision in *Associated General Contractors* v. *Carpenters*, No. 81-334 (Feb. 22, 1983), in which this Court canvassed the varying tests for antitrust standing employed by the different courts of appeals and elucidated the factors to be considered in determining whether a plaintiff has standing to sue for damages under the Clayton Act. Because of this intervening development, this case should be remanded to the court of appeals for further consideration in the light of *Associated General Contractors*.

1. We find no clearly-defined conflict among the circuits that would warrant plenary review by this Court at this time.

The Sixth Circuit has explored the scope of standing under Section 303 in a series of decisions. In *United Brick & Clay Workers* v. *Deena Artware, Inc.*, 198 F.2d 637, 643-644 (1952), the court of appeals stated that the "[w]hoever shall be injured" language of Section 303 should be read broadly and held that a primary employer—as opposed to the neutral employer—could sue under Section 303 for damages resulting from a secondary boycott. The court noted (198 F.2d at 644) that allowing a Section 303 suit by anyone injured in his business by an unlawful boycott was consistent with the construction given "analogous provisions of the

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not "business or property" within the meaning of Section 303(b). 695 F.2d at 408 n.9.

Sherman Anti-Trust Act, 15 U.S.C.A. §§1-7."[5] Eight years later, however, in *United Mine Workers* v. *Osborne Mining Co.*, 279 F.2d 716 (1960), the Sixth Circuit held that a *sales agent* of a coal producer could *not* sue to recover damages for sales lost because of a boycott aimed at pressuring the coal producer into recognizing the union.[6] Again, looking to decisions under the antitrust laws, the court concluded that the damage claimed by the agent was "incidental and too remote for recovery under federal law." 279 F.2d at 729. *Osborne* was distinguished in *Gilchrist* v. *United Mine Workers*, 290 F.2d 36 (6th Cir. 1961), where the court held that Section 303 conferred standing on a partnership that sold the coal mined by the employer that was the primary object of the secondary boycott where the sales agent and the primary employer formed part of an integrated coal business.

Petitioner claims (Pet. 8-9) that the Sixth Circuit addressed the precise question presented here in *Wells* v. *International Union of Operating Engineers, Local 181*, 303 F.2d 73 (1962), resolving the issue in a fashion contrary to the ruling below. Petitioner relies upon the following language in the Sixth Circuit's opinion in *Wells* (303 F.2d at 75 (emphasis added)):

> The final question raised by the defendants as to whether the Court had jurisdiction to hear the claims of the individual [employees of the employer with which the unions had their primary dispute], is without merit. *Clearly, jurisdiction is conferred*

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[5] The language of Section 7 of the Sherman Act, 26 Stat. 210, was borrowed by Congress in 1915, when it drafted the parallel provision of the Clayton Act, Section 4, 15 U.S.C. 15. (In 1955 Congress repealed Section 7 of the Sherman Act because it was superseded by other legislation. Act of July 7, 1955, Section 3, 69 Stat. 283.)

[6] The agent was not one of the neutral employers whose employees were the subject of union strike appeals.

to permit "whoever" is injured to sue without respect to the amount in controversy.

Although the Sixth Circuit's opinion is couched in terms of jurisdiction and appears to refer to a dispute about the necessity of meeting a threshold jurisdictional amount, because of the court's reference to "'whoever' is injured," petitioner interprets this language as addressing the issue at hand. Quoting from the briefs filed in *Wells*, however, respondent argues (Br. in Opp. 7-9) that the only question presented there was whether the claims of individual employee plaintiffs in *Wells* had to satisfy a requirement as to jurisdictional amount. A review of the briefs filed in *Wells* discloses some support for each party's reading of *Wells*. On balance, however, we find sufficient merit in respondent's contention to doubt that the Sixth Circuit would deem itself bound by stare decisis to decide the present case contrary to the decision of the court of appeals below.[7]

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[7] The questions presented are stated in varying fashion in the appellants' brief in *Wells*. Compare brief at i (questions 1(b) and 3) with brief at 6. The different formulations employed tend to support the two different assessments of the scope of the issue in *Wells*. But we find it most telling that there is no *argument* devoted to the standing issue in the appellants' brief, and that appellees responded only to the argument based on jurisdictional amount. See Brief for Plaintiffs-Appellees at 25-27. Thus, the union seemingly overlooked the standing argument in *Wells*, and the Sixth Circuit's reference to the particular plaintiffs as employees may have been intended only for purposes of identification. To be sure, the Sixth Circuit cited its prior decision in *Deena Artware* as authority for the ruling quoted above. See 303 F.2d at 75-76. But the *Wells* panel did not identify the particular language of *Deena Artware* it intended to invoke, and it turns out that, in a portion of the opinion in *Deena Artware* separate from that discussed above, the Sixth Circuit had noted that Section 303 waives the requirement of pleading a sufficient amount in controversy. Compare 198 F.2d at 640 with 198 F.2d at 643-644. Accordingly, there can be no assurance that the *Wells* panel recognized the standing issue presented here or in-

The Fifth Circuit has also addressed the standing issue under Section 303. In *W.J. Milner & Co.* v. *IBEW, Local 349*, 476 F.2d 8 (1973), unions exerted pressure on electrical contractors doing business in southern Florida in an effort to dissuade them from using products manufactured by Southwire, the employer with which the union had its primary dispute. The plaintiff, Milner, was Southwire's exclusive distributor in southern Florida and that distributorship represented a substantial portion of Milner's business. The court held that Milner could maintain suit under Section 303 to recover its damages resulting from the secondary dispute. The court summarized prior decisions as establishing that a third party could recover damages under Section 303 if it showed (476 F.2d at 11-12):

> some combination of the following circumstances: (1) an integrated business enterprise which includes the third party and either the primary or the neutral employer; (2) direct injury to the third party's property; and (3) a principal-agent relationship between the third party and the primary employer.

Using the "target area" metaphor familiar from decisions under the antitrust laws, the Fifth Circuit reasoned that Milner had standing because, as the de facto "sales arm of Southwire in the peninsular Florida area" it was "directly in [the union's] line of fire." 476 F.2d at 12. The court observed that, given the facts of the case, its ruling established no precedent for "unlimited liability under § 303 [that] might produce financial disaster for unions and inhibit the exercise of the right to strike." *Ibid.* The court also emphasized that the stand-

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tended to resolve it. Given the vintage of the case, the uncertainty as to whether the issue was deliberately resolved, and the lack of explanatory discussion, we believe the Sixth Circuit would be willing to examine this issue afresh should it arise in that court in the future.

ing of a plaintiff such as Milner "must be assessed on a case by case basis." *Ibid.*[8] Given the carefully limited holding of *Milner* we cannot agree with petitioners' suggestion (see Pet. 15-17) that the Fifth Circuit would have decided the present case differently from the Ninth Circuit.[9]

In view of the relatively undeveloped state of the law respecting the standing of employees who lose wages to recover those wages under Section 303, we believe that the issue should be allowed to ripen in the courts of appeals before this Court grants plenary review. In this case, however, we think that further consideration of the issue by the court of appeals is warranted.

2. As noted at the outset, we are in general agreement with the analytical approach employed by the court of appeals. Separate policy considerations underlying the antitrust laws and Section 303 dictate that standing principles developed in the former area cannot blindly be applied in cases under Section 303. See Note, *Standing to Sue Under Section 303 of the Labor Man-*

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[8] Judge Godbold, concurring in the result, agreed that "some rational limiting standard was intended by Congress," but professed that he was "unable to understand what standard [wa]s being proposed" in the lead opinion (476 F.2d at 13-14).

[9] Actually, petitioner's assertion is that the Ninth Circuit would have decided *Milner* differently from the Fifth Circuit. That seems to us far from clear, and, in any event, sheds little light on whether further review is warranted in *this* case.

Nor does the Fourth Circuit's decision in *Sapp* v. *Drivers, Chauffeurs & Helpers, Local Union 639*, 542 F.2d 224 (1976), necessarily conflict with the decision below. In *Sapp* the Fourth Circuit held that a trucker who "worked for" both the primary employer and a secondary employer involved in a union boycott had standing to sue for "damages attributable to the cessation of his business with the prime employer." *Id.* at 225. It appears, however, that Sapp was something more than an employee, for the union's objective was characterized as replacement of "Sapp with a trucker *who employed* union members." *Id.* at 225 (emphasis added). Moreover, the court cited *Milner*, a case involving a business rather than employees.

agement Relations Act, 45 N.Y.U. L. Rev. 539, 549-551 (1970). The fact remains, however, that the courts generally have looked to antitrust decisions for guidance respecting application of Section 303. This cross-reference is reasonable, given the similarities in the statutory language,[10] and the legislative history of Section 303 (see pages 14-15, *infra*).

Yet antitrust standing principles have undergone substantial development since the decisions of the Fifth and Sixth Circuits discussed above. See, *e.g.*, *Associated General Contractors* v. *Carpenters*, *supra*; *Blue Shield of Virginia* v. *McCready*, *supra*; *Reiter* v. *Sonotone Corp.*, 442 U.S. 330 (1979); see also Handler, *Changing Trends in Antitrust Doctrines: An Unprecedented Supreme Court Term—1977*, 77 Colum. L. Rev. 979, 988 (1977). In the circumstances, the court of appeals decisions discussed above shed even less light than they otherwise would on whether those courts—in 1982— would have reached a different result from that reached by the Ninth Circuit in the subject case. More significantly, in this case the Ninth Circuit did not have the benefit of *Associated General Contractors*, this Court's most recent and most exhaustive discussion of standing under the antitrust laws. It is not clear that the court of appeals' analysis conforms to the teaching of *Associated General Contractors*.

a. In *Associated General Contractors*, two labor organizations brought suit charging, among other things, a conspiracy to coerce landowners and others who let construction contracts into hiring nonunion carpentry subcontractors, thereby imposing an anticompetitive restraint on the carpentry subcontracting market. The

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[10] Like Section 303, both Section 4 of the Clayton Act, 15 U.S.C. 15, and its predecessor, former Section 7 of the Sherman Act (see page 7 note 5, *supra*), employ language limiting damages to those suffered "by reason of" the underlying statutory violations.

question presented in this Court was whether plaintiffs had standing to sue for damages under Section 4 of the Clayton Act. The Court noted the broad language of Section 4 (slip op. 10); but it also noted (*id.* at 11-12) that that provision and its precedessor, Section 7 of the Sherman Act, were enacted by Congress on the apparent understanding that common law principles respecting standing and tort liability would apply. The Court concluded (*id.* at 16-17; footnote omitted) that in resolving the standing question it was required to "evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them," since the judicial remedy "cannot encompass every conceivable harm that can be traced to alleged wrongdoing."

The Court enumerated the factors to be considered in determining the existence of standing in a particular case: (1) whether there is a causal connection between the antitrust violation and the harm to the plaintiff (slip op. 18); (2) whether the defendants specifically intended to harm the plaintiff (*ibid.*); (3) whether the plaintiff's injury is the type of injury about which Congress was concerned when it enacted the antitrust laws (*id.* at 19-21); (4) "the directness or indirectness of the asserted injury" (*id.* at 21-22); (5) the existence of an identifiable class of victims other than the plaintiff who would have a natural incentive to sue to enforce the laws in question (*id.* at 23); (6) whether the damages sought are easy to determine or highly speculative (*id.* at 23-24); (7) whether the case is manageable or whether it would entail burdensome litigation regarding apportionment of damages (*id.* at 24-26); and (8) whether there is a risk of duplicate recoveries (*i.e.* different parties recovering damages for essentially the same injury) (*ibid.*). Applying these factors, the Court concluded (*id.* at 26-27) that the plaintiff unions' "allegations of consequential harm resulting from a violation of the antitrust laws, although buttressed by an allegation of in-

tent to harm the [plaintiff unions], [were] insufficient as a matter of law" to support standing.

These indicia do not all point the same way in the present case. For example, damages for loss of wages are easy to compute, a factor suggesting that the action may be maintained. But see note 11, *infra*. On the other hand, there exists another victim—the employer—with a completely adequate incentive to sue the respondents for redress for injuries caused by the allegedly unlawful jurisdictional strike. Moreover, under the analysis dictated by *Associated General Contractors* the court of appeals might find reason to distinguish between plaintiffs who are carpenters, whose work respondents allegedly sought to capture for themselves, and plaintiffs who did other work at the Hanford site and were laid off when the employer laid off all site employees for ten days. Because the carpenters' wage loss may be deemed to be somewhat more directly caused by the respondents' alleged actions, and may more readily be deemed an intended consequence of these actions, the carpenter plaintiffs—or perhaps some subgroup thereof—have a stronger claim than their fellow workers.[11]

b. Among the factors to be considered under *Associated General Contractors* is whether a plaintiff's injury

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[11] The Ninth Circuit thus oversimplified matters in labeling the injury suffered by plaintiffs "too remote" to sustain their standing, observing that the employer's suspension of work was not a "'necessary and integral'" aspect of the alleged unfair labor practice. It may be correct that the laying off of the entire work force of 1800 employees was not integral to respondents' alleged unlawful actions, but the laying off of some carpenters, for at least some time during which they otherwise would have been working at the Hanford site, was inextricably bound up with the respondents' alleged objective to favor themselves in the assignment of work. Of course, limitation of the right of recovery along the lines suggested could make the computation of damages more difficult.

is the kind of injury Congress sought to avert. The court of appeals considered this factor (695 F.2d at 407-408), but its assessment (see page 5, *supra*) is not, in our view, entirely complete or balanced. The legislative history of Section 303 does not reveal any clear congressional intent to limit the Section 303 remedy to injured employers or to exclude employees in every case.

Section 303 was enacted as part of the Taft-Hartley amendments of 1947. It was added as a floor amendment sponsored by Senator Taft, who suggested it as a substitute for an amendment proposed by Senator Ball, which had been defeated, and which would have permitted private parties to seek injunctions as well as damages, as a remedy for illegal secondary boycotts and jurisdictional strikes. 2 *Legislative History of the Labor Management Relations Act* 1370 (1947) (hereinafter "*Leg. Hist.*"). Senator Taft characterized his proposal as "simply a right of suit for damages against any labor organization which undertakes a secondary boycott or a jurisdictional strike"—a remedy which was needed in "the typical case of a secondary boycott, wherein the small businessman is practically put out of business." *Id.* at 1371. Such suits would restore "to people, who lose something, because of boycotts and jurisdictional strikes, the money which they have lost." *Ibid.*

In a later colloquy on the amendment, Senator Morse objected that the language was too broad and might, for example, permit a union that engaged in a secondary boycott against a printing plant to be subjected to suits by "a thousand drug stores" that "do not receive delivery of a certain issue of a popular magazine." 2 *Leg. Hist.* 1397. Senator Taft responded that his proposal was similar to the damage remedy provided under the Sherman Act, except that only actual damages were permitted under his proposed amendment. *Id.* at 1398. He pointed out that "under the Sherman Act, if a

group of businessmen put a small concern out of business, they are subject to a suit for damages" and asked, "[i]f a labor union does the same thing, why should it not be subject to a suit for damages?" *Ibid.* Senator Morse then criticized the amendment for failing to include language expressing the limitations that judicial decisions had effectively engrafted onto the facially broad language of the antitrust damages provision. *Ibid.* Senator Taft did not reply to this criticism. The Taft amendment was thereafter adopted by the Senate vote. *Id.* at 1399-1400.

The history cited by the court of appeals (695 F.2d at 407-408) does not include the foregoing. Instead, it consists of remarks made by Senator Ball in support of his unadopted proposal (for which Section 303 was a substitute), and indications in the printed statements of Senators Ball, Taft, Donnell and Jenner accompanying the Senate Report on the Taft-Hartley bill in support of Senator Ball's proposed amendment. 2 *Leg. Hist.* 1347-1369; S. Rep. No. 105, 80th Cong., 1st Sess. 54-55 (1947), *reprinted* in 1 *Leg. Hist.* 460-461. This legislative history indicates that the Ball amendment was offered as an answer to the plight of small businessmen and farmers who were sometimes forced into bankruptcy if subjected to prolonged secondary boycotts or strikes. But at one point during the debate on his proposed amendment Senator Ball mentioned employees as beneficiaries of the private remedy to be created (2 *Leg. Hist.* 1350). Accordingly, the evidence of legislative intent as to the unsuccessful Ball amendment is somewhat equivocal.

It is nonetheless fair to say, of both the defeated Ball amendment and the successful Taft amendment, that Congress' focus was *primarily* on injuries to employers, and that any extension of the remedy to employees of the targets of boycotts (whether neutral or primary employers) should accordingly be undertaken with

great caution. Extending a Section 303 remedy to large classes of employees who are injured by actions taken by their employers in response to union boycotts might well—as the court of appeals noted (695 F.2d at 408)—pose a threat of open-ended liability that could deter even strike activity that is on the permissible side of the line drawn by the NLRA. This consideration and the overall pattern of remedies under the NLRA[12] militate against any open-ended reading of the right to sue conferred by Section 303.

* * * * *

In sum, the Court's most recent decision pertinent to the issue suggests that the court of appeals' analysis was not fully sensitive to the full range of pertinent considerations. While none of these factors necessarily compels a result different from that reached below, further consideration of the case in light of the intervening development in the law may dictate some adjustment of the result.

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[12] The injunction remedy provided by Section 10(*l*) of the NLRA, 29 U.S.C. 160(*l*), and a contempt sanction for violation of the injunction, are available for deterring violations of Section 8(b)(4).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded to that court for further consideration in the light of *Associated General Contractors* v. *Carpenters*, No. 81-334 (Feb. 22, 1983).

Respectfully submitted.

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SEPTEMBER 1983